



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

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July 13, 2004

**MEMBERS**

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Oil Spill Region  
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Coalition

Prince William Sound  
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Corporation

Environmental Planning  
Office of Safety and Environment, Management Directorate  
Department of Homeland Security  
Anacostia Naval Annex, Building 410  
245 Murray Lane, SW  
Washington, DC 20528

**SUBJECT:** Request for Public Comments on the National Environmental Policy Act  
as published in the Federal Register (Vol. 69, No. 113, June 14, 2004)

**To Whom It May Concern:**

The Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) is an independent, non-profit corporation whose mission is to promote environmentally safe operation of the Valdez Marine Terminal (VMT) and associated tankers. Our work is guided by the Oil Pollution Act of 1990 and our contract with Alyeska Pipeline Service Company (APSC). PWSRCAC's 18 member organizations are communities in the region affected by the 1989 Exxon Valdez oil spill, as well as commercial fishing, aquaculture, Native, recreation, tourism, and environmental groups.

This letter transmits the PWSRCAC's comments on the Department of Homeland Security (DHS) Notice of Proposed Directive and request for comments on implementing the procedural provisions of the National Environmental Policy Act (NEPA) as published in the Federal Register (Vol. 69, No. 113, June 14, 2004). After reviewing the proposed directive, PWSRCAC has identified the following two areas where we recommend that DHS provide additional clarification regarding the implementation of NEPA policies within DHS agencies:

**1. Public Access to NEPA documentation for DHS activities**

PWSRCAC is concerned that the provisions of Chapter 6 in the proposed directive provides significant latitude for DHS agencies to circumvent NEPA requirements for public disclosure of NEPA documentation, including Environmental Assessments (EA), Findings of No Significant Impact (FONSI), and Environmental Impact Statements (EIS) for projects with national security components or implications. The proposed directive reserves the right for DHS to withhold from the public any portions of an EA, FONSI, or EIS that may contain "classified or protected" information, and to black out the document in whole if it is deemed necessary.

PWSRCAC is aware that CEQ regulations at 1507.3(c) give federal agencies the authority to establish procedures that limit public access to NEPA documentation when the proposal contains classified information that must "be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute." The DHS proposed directive sets out a procedure for protecting classified information that complies with this regulation.

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However, PWSRCAC is concerned that, given the DHS's purview, DHS agencies could conceivably apply the national security exemption to all DHS agencies, since the Department's entire mission is focused on homeland security.

We request that DHS provide additional information to clarify how DHS agencies will apply the national security standard in a way that does not unnecessarily limit public access to NEPA documentation. More specifically, since the US Coast Guard (USCG) is now part of DHS rather than Department of Transportation (DOT), we request clarification as to how the national security element will be applied to their routine activities. Also, we request information on auditing procedures and guidance documents for determining application of the national security element for activities. We believe that these guidance documents should be incorporated into the final rule and made available to the public in order to understand the application and use of this process. These types of checks and balances are essential to protect the human environment and public's right to participate in the NEPA process.

## 2. Categorical Exemption #A5

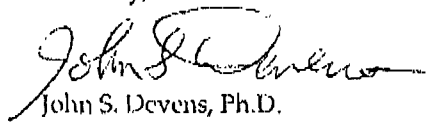
Categorical exemption (CE) #A5 exempts "Contingency planning and administrative activities in anticipation of emergency and disaster response and recovery. Examples include response plans, protocols for the use of suppressants, etc." This CE would exempt any contingency plan or emergency preparedness document developed by DHS agencies from NEPA requirements. The administrative record indicates that the workgroup that developed the CE list viewed A5 as encompassing "programmatic activities that inherently do not have any individual or cumulative significant impact on the environment."

PWSRCAC agrees that this categorical exemption is appropriate in many cases, where departmental procedures do not warrant a full NEPA analysis. However, it is unclear how or whether this exemption would apply to public contingency plans and emergency response plans such as the Alaska State/Federal Unified Plan for Oil Spill and Hazardous Substance Response, where the USCG is one of several state and federal agencies involved in developing the plan.

More importantly, PWSRCAC is concerned that certain situations may exist where the A5 CE might not be appropriate. For example, the CE might be invoked if the USCG published a protocol or guidance document that directed national policy for dispersant use or other chemical countermeasures in oil spill response. Since dispersant use has measurable impacts to the human environment, a NEPA review of the environmental impacts of such a policy would be warranted, but the CE could conceivably be applied to avoid an EA or EIS. PWSRCAC requests clarification from DHS regarding the extent to which the A5 CE would be applied in that type of situation. As mentioned under item one above, we request that categorical exemptions include guidance documents and internal auditing procedures so that the tools are available to definitively determine when exemptions will apply. For example, sub-agencies such as the U.S. Coast Guard should develop guidance documents that would outline how categorical exemptions will and will not be applied. These types of procedures are necessary to ensure that exemptions are applied consistently and appropriately.

PWSRCAC thanks DHS for the opportunity to comment on this important proposed directive.

Sincerely,



John S. Devens, Ph.D.  
Executive Director

Cc: Richard Ranger, Alyeska Pipeline Service Company  
CDR Mark Swanson, U.S. Coast Guard, MSO Valdez